IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6037 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHARANBHAI REVABHAI RABARI

Versus

DIST DEVELOPMENT OFFICER

Appearance:

MR PRABHAKAR UPADHYAYA for MR MUKESH H RATHOD for Petitioner

NOTICE SERVED for Respondent No. 1

MR RAJESH DESAI for MR PRASHANT G DESAI for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 18/02/2000

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution of India petitioner herein has challenged the impugned order dated 15.10.1987, Annexure A to the

petition, as the same being illegal, invalid and inoperative in law and being in violation of the elementary principles of natural justice. By the said order the services of the petitioner, who was appointed on probation basis, came to be terminated by an order simpliciter without stigma or penalty, with effect from 30.10.1987 A.O.H.

2. It is the case of the petitioner that he was appointed as a Peon, on daily wage basis, in the services of the Nagar Panchayat, Karamsad, with effect from 1.1.1985 and he continued to work upto 30.10.1987. It is the case of the petitioner that the Nagar Panchayat, Karamsad has vide resolution No.16 dated 1.5.1987 resolved to make the petitioner as a permanent Peon. Again on 8.10.1987 similar resolution was passed. It is the case of the petitioner that since 1.5.1987 the petitioner was treated as a permanent employee and therefore the respondent cannot thereafter treat him as a probationer and his services cannot be terminated on the basis that he is merely a probationer. The petitioner, therefore, filed the petition challenging the order dated 15.10.1987 wherein his services came to be terminated on the ground that he is merely a probationer.

3. Petition is contested by the respondent No.2 by filing affidavit in reply wherein averment made with regard to making the petitioner permanent Peon has been denied.

4. Heard learned advocate Mr. Prabhakar Upadhyaya for the petitioner and learned advocate Mr. Rajesh Desai for respondent No.2.

5. Learned advocate Mr. Upadhyaya for the petitioner has contended that since 1985 the petitioner was working as a Peon and by the resolution No.16 dated 1.5.1987 he was made permanent, it was not open for the respondent Nagar Panchayat to pass the impugned order dated 15.10.1987. In view of the aforesaid facts and circumstances, he submitted that the order dated 15.10.1987 which is impugned in this petition, is liable to be quashed and set aside.

6. In counter submission, learned advocate Mr. Rajesh Desai submitted that in the meeting held by the Nagar Panchayat dated 28.9.1987 it was resolved that without obtaining proper approval of the Development Commissioner no new post can be created. Therefore the petitioner and one Rameshbhai Bhoi, who were working as Peons were appointed further a period of six months on a

probation basis. It was also stressed that the resolution passed by the Panchayat in its general meeting so far as the appointment of the Peons is concerned, same cannot be acted upon without prior approval of the Development Commissioner. In support of the aforesaid contention he placed reliance on the circular issued by the Development Commissioner, Gujarat State, Gandhinagar dated 25.4.1987 wherein it is categorically mentioned that no additional post can be created without prior approval of the Development Commissioner.

7. Having examined the averments made in the petition and impugned order dated 15.10.1987 and the circular as well as the resolution, it cannot be gainsaid that the petitioner was appointed as a probationer since 1985. The Nagar Panchayat has passed a resolution in its meeting to appoint Peons on permanent basis but thereafter in another meeting the said resolution was amended as it was passed without obtaining prior approval of the Development Commissioner and, therefore, again the services of the petitioner were made temporary and he was treated as on probation. In sum and substance, the services of the petitioner were never made permanent as prior approval was not also obtained from the Development Commissioner to make him a permanent Peon. In view of this, it cannot be disputed that the petitioner was a probationer till he was relieved from the services vide order dated 15.10.1987.

8. It is a settled proposition of law that a probationer cannot claim the status of a permanent employee and he can be relieved from the service at any time by a simpliciter order without stigma or penalty. Since the petitioner was a probationer and he was relieved from the services vide a simpliciter order dated 15.10.1987 without stigma or penalty, with effect from 30.10.1987 AOH, he cannot claim the relief on the basis that he is a permanent employee.

9. In view of the aforesaid discussion, the petitioner is not entitled to any relief prayed for in the petition and the petition being devoid of any merits is liable to be rejected.

10. In the net result, the petition is rejected with no order as to costs. Rule is discharged.

(karan)